

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

GRAHAM-FIELD INC., AND
GRAHAM-FIELD EXPRESS

PLAINTIFFS

VS.

TUFFCARE, INCORPORATED

DEFENDANTS

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CIVIL NUMBER: 98-1306 (DRD)

TAKING OF THE DEPOSITION OF VICENTE GUZMAN

DATE : DECEMBER 27, 2001

TIME : 9:30 A.M.

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P R E S E N T

FOR THE PLAINTIFFS:

MR. KENNETH McCULLOCH, ESQ.

FOR THE DEFENDANTS:

MR. ARTURO NEGRON GARCIA, ESQ.

MRS. MARIANA NEGRON VARGAS, ESQ.

MRS. LOURDES PAGAN GONZALEZ, ESQ.

MR. DEPONENT:

MR. VICENTE GUZMAN LOPEZ

NOTARY PUBLIC:

MR. ARTURO NEGRON GARCIA, ESQ.

MR. COURT REPORTER:

MR. MERILYN VAZQUEZ DE GARCIA

1 *****
2 All parties being present, the following is the transcript
3 of the proceedings:
4 *****

5 MR. KENNETH McCULLOCH:

6 We are resuming the deposition, uh, from a week ago. Uh,
7 everybody has been sworn, uh, so we'll just continue.

8 MR. VICENTE GUZMAN LOPEZ

9 Having first fully sworn in
10 testified and was examined upon his oath as follows:

11 ...DIRECT EXAMINATION...

12 MR. KENNETH McCULLOCH, ESQ:

13 Q Uh, Mr. Guzmán, at the time of the sale of V.C.
14 Medical to Graham Field and Graham Field Express, was V.C.
15 Medical a profitable business?

16 I "Al momento de la venta de V.C. Medical a Graham
17 Field Express, eh, ¿V.C. Medical era una operación que estaba
18 ganando, teniendo ganancias?"

19 A "Sí."

20 I Yes.

21 Q Approximately, in, in 1995, which was the last
22 complete year, approximately, what was the profit?

23 I "Y en '95, question fue el último año completo,
24 ¿aproximadamente, cuánto fue la ganancia?"

25 A "No recuerdo la cantidad."

1 I Yes.

2 Q And at this time, um, V.C. Medical did not buy beds
3 from Tuffcare, correct?

4 I "Y para ese entonces V.C. Medical no le compraba
5 camas a Tuffcare."

6 A "¿Para qué año en específico?"

7 I ¿What specific year was it?

8 Q In... Well, did, did V.C. Medical ever buy beds
9 from, uh, Tuffcare?

10 I "¿Alguna vez le compró V.C. Medical camas a
11 Tuffcare?"

12 A "No."

13 I No.

14 Q Okay. In, in... I believe, in, in fact, um, I know
15 this is, uh... Well, I can ask the question without having to
16 come... Was, was, uh... Did... When you had V.C. Medical,
17 uh, did you buy your semi-electric beds, um, from, uh, another
18 company, uh, called, uh... S.S.C. Medical Products?

19 I "Usted, cuando tenía V.C. Medical, le compraba las
20 camas semi-automáticas o semi-eléctricas..."

21 MRS. LOURDES PAGAN GONZALEZ:

22 "Semi-eléctricas."

23 INTERPRETER:

24 "¡Ah! Semi-eléctricas a una compañía que se llama S.S.C.,
25 eh, Medical...?" ¿S.S.C...?

1 MR. KENNETH McCULLOCH, ESQ:

2 Q S.S.C. Medical Products.

3 I "S.S.C. Medical Products."

4 A "¿Podría repetir la pregunta?"

5 I Could you repeat the question?

6 Q Okay. When you had V.C. Medical, uh, 1995, was the
7 company from which you purchased semi-electric beds a company
8 called S.S.C. Medical Products?

9 I "En el '95, cuando usted tenía a V.C. Medical, la
10 compañía a quien le compraban las camas semi-eléctricas, ¿se
11 llama, era una compañía que se llamaba" S.S.C. Medical...?"

12 A "Sí."

13 I Yes.

14 Q And in 1996, was it the same thing? That V.C.
15 Medical purchased the beds from, uh, the same company?

16 I "¿Y en el '96 fue igual, que V.C. le compraba las,
17 las, esas camas a la misma compañía?"

18 A "Eh, específicamente, ¿que si todas mis camas las
19 compraba a ellos o si compraba otras camas de otra gente?
20 Quiero aclarar."

21 I I want to clarify. I want to know if you mean
22 whether all my beds were purchased from them or whether I
23 purchased other beds from other people.

24 Q Um... Okay. Did you...? In 1996, did you purchase
25 bed, semi-electric beds from anyone...? I'm talking about V.C.

1 Medical prior to the sale. Did you purchase semi-electric beds
2 from anyone but S.S.C. Medical?

3 I "Mi pregunta es, en el '96, cuando usted estaba con
4 V.C. Medical, antes de la venta de V.C. Medical, si usted le
5 compraba ese, esas camas semi-eléctricas a alguna otra compañía
6 que no fuera" S.S.C. Medical.

7 A "Sí, le compraba a otra compañía."

8 I Yes, I, I bought from another company.

9 Q What was the other company?

10 I "¿Y cuál otra compañía?"

11 A "Graham Field."

12 I Graham Field.

13 Q Semi-electric beds?

14 I "Camas semi-eléctricas?"

15 MRS. LOURDES PAGAN GONZALEZ:

16 "Semi-eléctricas."

17 DEPONENT:

18 "Sí, eran camas semi-eléctricas marca Smith & Davis."

19 INTERPRETER:

20 Yes, they were Smith & Davis semi-electric beds.

21 MRS. LOURDES PAGAN GONZALEZ:

22 Beds.

23 MR. KENNETH McCULLOCH, ESQ:

24 Q Okay. Now, at the time, uh, of the sale, uh, of V.C.
25 Medical, um... in August or September of 1997, six (6), excuse

1 Q Okay. Now, what was your understanding of the effect
2 of this letter by Calvin Chang on August 27 with respect to the
3 exclusive sales agreement?

4 I "Ahora, ¿qué efecto entendió usted que tenía esta
5 carta del 27 de agosto de Calvin Chang al contrato exclusivo,
6 de ventas exclusivas?"

7 A "Bueno, había una preocupación bien grande de parte
8 de Tuffcare ya que Graham Field tenía sillas que competían con
9 Tuffcare, la marca Everest & Jennings."

10 I Uh, there was, uh, great concern from Tuffcare
11 because Graham Field had a line of, uh, wheelchairs... "¿De
12 sillas de ruedas?" Of wheelchairs that would compete with
13 theirs and the, uh, the brand was...

14 A "Everest & Jennings."

15 MRS. LOURDES PAGAN GONZALEZ:

16 Everest &...

17 INTERPRETER:

18 ...Everest & Jennings.

19 MR. KENNETH McCULLOCH, ESQ:

20 Q Okay. In, in the letter that's been marked as
21 Exhibit six (6), at the, the last sentence of the first...

22 A "No, no, no he terminado."

23 I Uh, I'm not, I'm not done yet.

24 Q Oh, I'm sorry.

25 I ...my answer.

1 Q ¡Ah!

2 A "Y..."

3 MRS. LOURDES PAGAN GONZALEZ:

4 He hasn't finish.

5 DEPONENT:

6 "Sí. Y debido a eso, pues, cuando él me envía la carta,
7 él me notifica que vamos a seguir haciendo negocios..."

8 INTERPRETER:

9 And because of that, when he sends me the letter, he
10 mentions that we're going to continue doing business...

11 DEPONENT:

12 "...y vamos a ver qué pasaba en el futuro con la, con los
13 productos, con las sillas de ruedas que tenía Graham Field cómo
14 podía entrar Tuffcare."

15 INTERPRETER:

16 ...and we would see how things were done in the future,
17 see what would happen with the wheelchairs that Graham Field
18 had, how they would, uh, workout with Tuffcare and its
19 products.

20 MR. KENNETH McCULLOCH, ESQ:

21 Q Okay. In, in the first... Looking at Exhibit six
22 (6), the letter of August 27, in the last paragraph, the
23 sentence is: "All other terms and conditions of the
24 distribution agreement shall remain in full force and effect
25 after such assignment." Do you see that sentence?

1 I "¿Ve esa última oración en el primer párrafo: "Todos
2 los términos y condiciones del acuerdo de distribución, eh, se
3 mantendrán en fuerza luego de tal asignación"?"

4 A "Sí."

5 I Yes.

6 Q Now, um, looking at the distribution agreement,
7 that's Exhibit one (1)...

8 I "Ahora, examinando el acuerdo, el número uno (1)..."

9 Q ...what, um, there's different paragraphs there, what
10 paragraphs did you understand that would remain in full force
11 and effect after the assignment?

12 I "Ahora, ¿cuál de esos párrafos, y hay, hay varios,
13 entiende usted que eran los que iban a mantenerse, eh, en, en,
14 en efecto, eh, de acuerdo al contrato, a la carta?"

15 A "Permítame evaluarlo."

16 I If you allow to...

17 Q Sure.

18 I evaluate it.

19 Q Sure.

20 A "Entiendo que la número tres (3)."

21 Q Uh, would you read that three...

22 A "No, no."

23 I I understand...

24 A "Perdón, perdón."

25 I ...that number three (3).

1 A "Perdón, perdón."

2 I No, excuse me.

3 MRS. LOURDES PAGAN GONZALEZ:

4 Uh, in order to refresh his memory, uh, we would
5 appreciate if you allow me to show him the letter of August 17,
6 1996.

7 MRS. MARIANA NEGRON VARGAS:

8 That was introduced, I...

9 MRS. LOURDES PAGAN GONZALEZ:

10 Yeah.

11 MRS. MARIANA NEGRON VARGAS:

12 ...I don't...

13 MR. KENNETH McCULLOCH:

14 Okay. He can look at anything...

15 MRS. LOURDES PAGAN GONZALEZ:

16 Yeah.

17 MR. KENNETH McCULLOCH:

18 ...he, he wants. I'm...

19 MRS. LOURDES PAGAN GONZALEZ:

20 Allow him, so he can refresh his memory.

21 COURT REPORTER:

22 Can he...?

23 MRS. LOURDES PAGAN GONZALEZ:

24 Is not the same.

25

1 COURT REPORTER:

2 Can he put the paper away from the microphone? Thanks.

3 DEPONENT:

4 "Lo que yo entendí por esta carta es que voy a poder
5 seguir vendiendo los productos de Tuffcare estando en Graham
6 Field."

7 INTERPRETER:

8 What I understood this letter meant was that while at, at
9 Graham Field I would still be able to sell Tuffcare's products.

10 **MR. KENNETH McCULLOCH, ESQ:**

11 Q Okay, but, more specifically, um, did you understand
12 that, that, um, you had to make purchases of at least ten
13 thousand dollars (\$10,000) a month, uh, of Tuffcare products in
14 order to maintain that status?

15 I "Pero yendo más, siendo más específicos, ¿entendió
16 usted que usted, eh, seguía teniendo que hacer compras de por
17 lo menos diez mil dólares (\$10,000) al mes para mantener ese
18 estatus?"

19 A "No recuerdo."

20 I I don't recall.

21 Q What about, um... I don't have, uh, my copy of the,
22 to look. Um... Okay. Paragraph two (2) says, of the
23 exclusive sales agreement, Exhibit one (1): "All sales needs
24 from Puerto Rico will be referred to the distributor." Uh, did
25 you understand that that part was still in effect? That, that

1 MR. KENNETH McCULLOCH:

2 No, no, that. That right there. That's one (1).

3 INTERPRETER:

4 Oh! I thought you wanted this one.

5 MR. KENNETH McCULLOCH, ESQ:

6 Q No, no. Uh, right now, this is the only copy of one
7 (1). I, I gave other people copies.

8 I "Ahora mismo esta es la única copia del número uno
9 (1) porque le di copia a otras personas."

10 Q Now, with respect to Exhibit six (6), this one, and
11 that last sentence of the first paragraph...

12 I Of the first paragraph. "Con relación a este Exhibit
13 seis (6) y esta última...

14 Q ...which says...

15 I "...oración..."

16 Q "...all other terms and conditions of the
17 distribution arrangement shall remain in full force and effect
18 after such assignment..."

19 I "...el cual dice: "Todo otro término, todos los otros
20 términos y condiciones del acuerdo de distribución se
21 mantendrán en vigencia luego de tal asignación..."

22 Q ...uh, do you remember if any of the privileges of
23 this Exhibit one (1) remained in full force and effect after
24 August 27?

25

1 I "...¿recuerda si después de agosto 27 alguna de estas
2 disposiciones, eh, del Exhibit uno (1) se mantuvo en vigencia?"

3 A "Permítame..."

4 I Allow me to...

5 Q Uh-huh.

6 I ...examine it.

7 A "¿Me puede repetir la pregunta otra vez?"

8 I Could you repeat the question?

9 Q Do you remember if any of these provisions, as far as
10 you know, remained in effect after... August 27? What was your
11 understanding?

12 I "¿Qué entendía usted, si alguna de estas
13 disposiciones, de estas condiciones se mantuvo en vigencia
14 después del 27 de agosto?"

15 A "Yo entiendo que el contrato quedó fuera y
16 continuamos haciendo negocio, eh, en negocio abierto."

17 I I understand that the contract was satisfied and that
18 we would continue doing just open business.

19 Q Okay. So you didn't understand that you had to sell
20 ten thousand dollars (\$10,000) a month.

21 I "¿Así que usted no entendía como que tenía que vender
22 diez mil dólares (\$10,000) al mes?"

23 A "No."

24 I No.

25 Q Okay. So you didn't understand that you had to pay

1 in ten (10) days?

2 I "¿Y no entendía usted que tenía que pagar en diez
3 (10) días?"

4 A "Sí, teníamos que pagar en, en, en el término
5 acordado."

6 I Yes, we did have to pay within the agreed term.

7 Q Where was the agreed term of payment in ten (10)
8 days?

9 I "¿Y dónde está el acuerdo, eh, el tiempo, el período
10 acordado de diez (10) días?"

11 A "Lo que pasa es que eso es lo que habíamos hablado
12 anteriormente."

13 I The thing is that is what we had talked about before.

14 Q Who's "we"?

15 I "¿"Nosotros" quién?"

16 A "Eh..."

17 I "¿"Lo que habíamos" quién?"

18 A "Eh, Calvin y yo."

19 I Calvin and I.

20 Q And you talked about that when?

21 I "¿Y hablaron sobre eso cuándo?"

22 A "No recuerdo exactamente pero lo discutimos."

23 I I don't recall exactly when, but we did discuss it.

24 Q Was it before or after the sale?

25 I "¿Eso fue antes o después de la venta?"

1 A "Lo discutimos antes y después."

2 I We discussed it before and after.

3 Q There is no provision in Exhibit one (1) requiring
4 payment within ten (10) days, is there?

5 I "Pero no había una disposición ahí en el Exhibit uno
6 (1) que exige que se pague en diez (10) días, ¿o sí?"

7 A "En el Exhibit uno (1) no, no había nada."

8 I In Exhibit one (1) no, there was nothing.

9 A "Pero sí habíamos acordado que debíamos cumplir con
10 la manera de pago."

11 I But we had agreed that we did, we should agree in the
12 form of payment.

13 Q What else did you agree on?

14 I "Y qué otra cosa acordaron?"

15 A "Mayormente, en cuanto a lo económico, fue eso."

16 I Mainly, as the financial aspect, it was that.
17 Economic aspect, it was that.

18 Q Uh, what other agreement did you have with Calvin
19 that was not in writing that took place at about the time of
20 the sale of V.C. Medical to Graham Field?

21 I "¿Pero qué otro acuerdo que no estuviera por escrito
22 tenía usted con, uh, Calvin que ocurriera más o menos para la
23 época de la venta..."

24 MRS. MARIANA NEGRON VARGAS:

25 I, I object as to form just because...

1 INTERPRETER:

2 "...de V.C. Medical?"

3 MRS. MARIANA NEGRON VARGAS:

4 ...it seems that you're referring to... Assuming that he
5 might've said maybe, uh, you may repeat the question, but you
6 seem to have said that. If that is what you meant, that was
7 around the time of, uh... When you say what other agreement
8 did you have around the time of the sale...

9 MR. KENNETH McCULLOCH:

10 Uh-huh.

11 MRS. MARIANA NEGRON VARGAS:

12 ...it seems like that's referring, that, that they agreed
13 on a ten (10) day payment seem to occur on the time of the sale
14 means that it was before or after...

15 MR. KENNETH McCULLOCH:

16 Yeah.

17 MRS. MARIANA NEGRON VARGAS:

18 Do you understand what I'm saying? It just seems a, a bit
19 confusing that, saying "as of the agreement around the time of
20 the sale". Maybe, what agreement did you have or any agreement
21 you have...?

22 MR. KENNETH McCULLOCH:

23 During the same before and after, I'm talking.

24 MRS. MARIANA NEGRON VARGAS:

25 Oh, okay.

1 MR. KENNETH McCULLOCH, ESQ:

2 Q Uh, uh... Any other agreement that you had with
3 Calvin Chang, uh, at about the time of the sale.

4 I "Algún otro acuerdo que haya tenido con Calvin Chang,
5 eh, como para el momento de la venta."

6 A "El... El acuerdo que teníamos era de, de, que sí
7 podíamos continuar vendiendo las sillas de rueda estando con
8 Graham Field, con sus productos."

9 I The other agreement was that, yes, we could continue
10 selling their wheelchairs while at Graham Field and their
11 products.

12 A "Pero que iba a ser una relación abierta."

13 I But that it would be an open relationship.

14 Q But "open" what do you mean?

15 I "¿Qué quiere decir con ese abierta?"

16 A "Eh, pues, que yo iba a seguir comprándole..."

17 I Well, that I would continue purchasing from them...

18 A "...que, pues, el hecho de que Graham Field tuviera
19 productos competitivos él iba a seguir vendiéndonos a
20 nosotros."

21 I ...and that even though had, uh, competitive products
22 he would continue selling to us.

23 Q Okay. Other than those two (2) aspects that you just
24 discussed, uh, payment terms and what you just discussed, were
25 there any other agreements that you had with Calvin Chang at

1 I "Ahí menciona un catálogo de piezas de Tuffcare. ¿A
2 qué se refiere esto?"

3 A "Pues eso es una, las partes de las sillas de
4 ruedas..."

5 I That's regarding the parts of the wheelchairs...

6 Q So, as of this time, Tuffcare sent you a catalog of
7 the different parts for wheelchairs?

8 I "O sea, ¿que para esa época Tuffcare le envió un
9 catálogo de las distintas piezas para las sillas de rueda?"

10 A "Sí."

11 I Yes.

12 Q And you sold those parts to people down here in
13 Puerto Rico?

14 I "¿Y usted le vendía esas piezas a las personas aquí
15 en Puerto Rico?"

16 A "No recuerdo si se llegó a vender, pero la razón por
17 la que hice esto es porque nos estaban pidiendo piezas los
18 clientes de las sillas Everest & Jennings y, eh, y tenía que
19 buscarles algo para ofrecerles la opción de que lo teníamos
20 pero no recuerdo si, si lo vendí."

21 I I don't remember, I don't recall if sales were made,
22 but were receiving requests from people wanting parts from,
23 uh...

24 MRS. LOURDES PAGAN GONZALEZ:

25 Everest & Jennings.

1 INTERPRETER:

2 ...Everest & Jennings and we wanted to have to option of
3 offering them, the parts also from Tuffcare.

4 MRS. MARIANA NEGRON VARGAS:

5 I believe that he said at the end that, that he wasn't
6 sure whether any sale had occurred. Is that...?

7 MRS. LOURDES PAGAN GONZALEZ:

8 Yeah, she, she mentioned it at...

9 MRS. MARIANA NEGRON VARGAS:

10 Oh, I'm sorry.

11 MRS. LOURDES PAGAN GONZALEZ:

12 No, that's alright. But she mentioned it.

13 MRS. MARIANA NEGRON VARGAS:

14 I didn't...

15 INTERPRETER:

16 But I was...

17 MRS. LOURDES PAGAN GONZALEZ:

18 Sorry. Yeah. Okay.

19 INTERPRETER:

20 "But I wasn't sure if any had been made".

21 **MR. KENNETH McCULLOCH, ESQ:**

22 Q And by this memo you were telling your sales staff
23 that, uhm, the parts for, the parts that have been supplied by
24 Tuffcare could be used on Everest & Jennings products, correct?

25